

Amanamoi (Migration) [2023] AATA 3867 (20 July 2023)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Titus Obura Amanamoi
VISA APPLICANT:	Mrs Sunday Luka Okieu Erenge
REPRESENTATIVE:	Ms Mary Hanna
CASE NUMBER:	1918547
DIBP REFERENCE(S):	BCC2018/470268
MEMBER:	Edward Howard
DATE:	20 July 2023
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa: • cl.309.211(2) of Schedule 2 to the Regulations • cl.309.221(1) of Schedule 2 to the Regulations

Statement made on 20 July 2023 at 9:14am

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine spousal relationship – financial aspects – nature of the household – social aspects – nature of the commitment – decision under review remitted

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65, 360

Migration Regulations 1994 (Cth), r 1.15A; Schedule 2, cls 309.211, 309.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 14 June 2019 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).
3. The visa applicant applied for the visa on 29 January 2018 on the basis of her relationship with her review applicant, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211.
5. In March 2023 the Tribunal undertook outreach to obtain updated information. As a result of this outreach the review applicant provided updated evidence and submissions which were received between April – July 2023.
6. In reaching its decision the Tribunal did not consider a hearing to be necessary, as it was able to find in favour of the visa applicant on the basis of the material before it, pursuant to s 360(2)(a) of the Act.
7. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

8. BACKGROUND

9. The visa applicant is Ms Sunday Luka Okeieu Erenge, aged 36 years, a citizen of South Sudan and the review applicant is Mr Titus Obura Amanamoi, aged 57 years, an Australian citizen. The review applicant was born in South Sudan and migrated to Australia in 2003.
10. The parties claim to have known each other since childhood but lost contact between 1999 and 2015. The parties began a long-distance romantic relationship in 2015 and met in person for the first time again in April 2017 when the review applicant travelled to South Sudan.
11. The parties were married by proxy on 6 May 2017 and a copy of the marriage certificate was provided. Neither party has claimed to have had any other previous relationship or children.
12. The visa applicant applied for a Partner (Provisional) (Class UF) (Subclass 309) visa on 29 January 2018. This application was refused by the delegate on 14 June 2019. The visa applicant remains offshore living in South Sudan.

13. ISSUES AND LAW

14. There is a two-stage process for offshore Partner visas. A visa applicant must first hold a provisional visa, enabling them to remain in Australia on a temporary basis, prior to the grant of a permanent visa. The grant of a permanent visa would generally depend on whether the relationship has continued for a period of at least two years. In this matter, the Tribunal is considering the first, temporary stage.

15. Where the Tribunal is considering a criterion that requires the definition of spouse or de facto partner to be met at the time of the visa application, the information supplied in relation to the reg 1.15A(3) matters may relate to circumstances after the time of application. In forming a view of the relationship at the time of application, the Tribunal must consider all relevant evidence, which may include evidence of events after the date of application insofar as it assists in the task of determining whether the visa applicant and the review applicant were in a partner relationship at the time of the application. Evidence of events after the visa application is relevant if it tends logically to show the existence or non-existence of facts relevant to the issue to be determined.¹
16. The issue in the present case is whether at the time of the visa application and the time of this decision, the parties satisfy the criteria under cl.309.211 and cl.309.221.

Whether the parties are in a spouse or de facto relationship

17. Clauses 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the review applicant who is an Australian citizen.
18. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

19. On the evidence, the parties were married to each other in March 2018, under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

Are the other requirements for a spouse relationship met?

Financial aspects of the relationship including joint ownership of assets; joint liabilities; extent of pooling of financial resources; any legal obligations owed to the other party; any sharing of day-to-day household expenses.

20. As noted in the delegate's decision, limited information was provided in relation to the financial aspects of the relationship. This information included a statement from the review applicant confirming money transfers to the visa applicant for financial assistance. Further, receipts for these money transfers were provided in respect of 11 transactions between April 2017 and September 2018.
21. The following evidence was given to the Tribunal after the application for review was lodged and in response to the requests for further information made in March 2023:

¹ *Ally v MIAC* [2008] FCAFC 49 at [32]–[35]; *Jayasinghe v MIMA* [2006] FCA 1700 at [35], citing *MIEA v Poche* (1980) 4 ALD 139 at [24] per Deane J which held that evidence of subsequent events may be taken into account if it 'tends to logically show the existence or non-existence of' the relationship at that particular time; and see also *Bretag v IRT* [1991] FCA 582 at [13]–[15].

- The review applicant has provided receipts for thirty-six (36) money transfers from 2017 – 2023. The review applicant forwards money to the visa applicant regularly, normally every 4–6 weeks. This financial assistance helps a visa applicant with normal living expenses and the cost of education. The visa applicant is not currently working. The assistance from the review applicant also helps the visa applicant's sister.
- The review applicant has provided his Notices of Assessment from the ATO from 2016 – 2021, together with a number of payslips.

22. The Tribunal finds on the evidence that the parties do not have joint ownership of any real estate or other major assets, nor do they pool their financial resources. The Tribunal accepts that due to the fact that the parties live in different countries the financial aspects of the relationship are limited and the parties have no liabilities nor owe legal obligations to each other. However, the Tribunal takes note of the ongoing financial assistance which the review applicant has forwarded to his wife on a regular basis over a period of approximately six years. The Tribunal places some weight on the financial aspects of the relationship.

Nature of the household – including any joint responsibility for care and support of children; parties' living arrangements; and any sharing of housework.

23. The parties have lived in different countries since their marriage in 2017. During the course of their marriage, the review applicant has visited South Sudan and Uganda on two further occasions to visit his wife, with an extended period where they were unable to meet as a result of the Covid-19 pandemic.
24. The review applicant's statement refers to him and the visa applicant living together as husband and wife during his trips to South Sudan and Uganda. The evidence provided to the Tribunal includes travel itineraries, insurance policies, boarding passes and movement records from the Department. These documents confirm that the review applicant has travelled to South Sudan in 2017 and 2019 and to Uganda in 2022/2023.
25. The Tribunal has also been provided with receipts disclosing purchases made by the review applicant for his wife during his travels to visit her. There has also been receipt for rental accommodation provided for the most recent visit.
26. As a result of residing in different countries, the parties have had limited opportunity to live as a married couple in a shared household.
27. The Tribunal is satisfied that during the periods in which the review applicant was in South Sudan and Uganda, the parties' household and living arrangements were consistent with that of a married couple in a genuine relationship. The Tribunal weighs consideration of the household aspects of the relationship in favour of the visa applicant.

Social aspects of the relationship – including whether parties represent themselves to other people as being married to each other; the opinion of friends and acquaintances about the nature of the relationship; and any basis on which the persons plan and undertake joint social activities.

28. In relation to the social aspects of the relationship, the parties have provided their marriage certificate dated 6 May 2017 and photographs of the proxy wedding ceremony held at the visa applicant's uncle's property. They have also provided 11 supporting statements from family members and friends attesting to the genuineness of the relationship.

29. The party submission is that their relationship is well recognised and fully supported by their family and friends. The Tribunal has been provided with a further nine supporting statements from witnesses which include the visa applicant's sister, the review applicant's brother and other family members and acquaintances.
30. The parties have also provided photographs taken of themselves together and in the company of family and friends during the review applicant's visits to see his wife in 2019 and 2022.
31. The Tribunal is satisfied on the evidence that the parties represent themselves to other people as being married to each other, that they hold the favourable opinion of friends and family members about the nature of the relationship and that they plan and undertake joint social activities. The Tribunal weighs the social aspects of the relationship in favour of the applicant.

Nature of persons' commitment to each other – including duration of the relationship; the length of time they have lived together; degree of companionship and emotional support they draw from each other; and whether they see the relationship as long-term.

32. In the initial evidence provided to the Department, the review applicant provided a detailed statement as to his relationship with the visa applicant, dated 17 August 2018. This statement explained that the parties had known each other previously, prior to the review applicant migrating to Australia.
33. Through family members, the review applicant made contact with the visa applicant and they spoke together for the first time since 1999, in 2015. In early 2016, the visa applicant requested the approval of the visa applicant's parents to propose marriage. In April 2017 the review applicant travelled to South Sudan to visit the visa applicant and they were married by proxy on 6 May 2017 following his return to Australia.
34. Following the outreach from the Tribunal in March 2023, the review applicant provided a further detailed statement on 6 April 2023 reiterating their background and the development of their relationship.
35. The parties also provided the Tribunal with evidence of their ongoing and regular communications including by phone, message apps and Facebook between 2019 – 2023.
36. The Tribunal considers that the parties evidence supports a view that they are committed to a genuine and continuing relationship as a married couple. The Tribunal places weight upon their commitment to each other over a period of eight years since their first contact again after many years: by reference to their ongoing regular communication with each other; their interaction with respective family members; the trips made by the review applicant to South Sudan and Uganda and the time spent together. The parties' evidence supports a view that they are committed to a long-term relationship.
37. From the evidence provided, the Tribunal finds that the parties are in a genuine and continuing relationship, show a strong commitment to each other, provide significant emotional support to each other and clearly see the relationship as long-term. The Tribunal weighs the nature of the commitment in favour of the applicant.

Conclusion

38. On the basis of the above the Tribunal is satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
39. Accordingly, the Tribunal is satisfied the visa applicant meets cl.309.211 and cl.309.221.
40. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a subclass 309 visa.

DECISION

41. The Tribunal remits the application for a Partner (Temporary) (Class UF) visa, with the direction that the visa applicant meets the following criteria for a subclass 309 (partner) visa:
 - cl 309.211(2) of Schedule 2 to the Regulations
 - cl 309.221(1) of Schedule 2 to the Regulations

42. Edward Howard
Member

43.

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).